

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-220413

**DATE:** February 19, 1986

**MATTER OF:** ADAK Communications Systems, Inc.

**DIGEST:**

Post-bid opening cancellation of solicitation based on agency determination that a requirements contract with estimated quantities should have been used instead of a contract specifying fixed quantities is unreasonable where (1) solicitation included "Additions or Deletions of Equipment" clause which would have allowed some fluctuations in quantities; and (2) record does not show that the stated fixed quantities so misrepresented the agency's needs that bidders would be misled or an award would not satisfy the government's minimum needs even with the clause.

ADAK Communications Systems, Inc. protests the Department of the Air Force's post-bid opening cancellation of invitation for bids (IFB) No. F41800-85-B-9722. ADAK, the low bidder, requests that the IFB be reinstated and that it be awarded the costs of preparing its bid and pursuing its protest with our Office. The protest is sustained, but ADAK's request for reimbursement of its costs is denied.

The IFB involved the on-site maintenance and support of various types of radios located at Brooks Air Force Base, Texas, for fiscal year 1986, with two option years. Section B of the IFB, the bid schedule, asked for monthly prices for routine maintenance on fixed quantities in each of the three categories of radios--fixed, mobile, and portable. Section C of the IFB contained an inventory listing of the radios by individual serial numbers, the totals corresponding to the quantities listed in section B. The IFB also requested unit prices on estimated quantities of radios for other services such as emergency repairs.

Due to a protest filed against a similar solicitation for maintenance and support of radios at Kelly Air Force Base, Texas, the Air Force, prior to making an award under the instant IFB, decided to see if the government's needs

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were correctly stated. Upon review, the Air Force determined that the IFB incorrectly described the government's needs by stating fixed quantities of radios for routine maintenance when the government's needs actually were for estimated quantities and, therefore, a requirements contract. The Air Force also determined that the estimated quantities of radios that probably would require routine maintenance would be larger than the fixed quantities set forth in the IFB, and that the fixed quantities in section B of the IFB therefore were not reasonably accurate representations of the government's actual needs. The Air Force canceled the IFB because of this inadequacy.

ADAK contends that bidders were not prejudiced by the IFB's failure to indicate estimated quantities of radios for routine maintenance, in lieu of fixed quantities, and that the Air Force could meet its needs by awarding a contract under the IFB. ADAK points out that some changes in the quantities set forth in section B of the IFB would be possible under the "Additions or Deletions of Equipment" clause in section C of the solicitation, since the clause provided for additions or deletions to the inventoried equipment on a continuing basis, with accompanying cost adjustments to be based on the contractor's specified price. ADAK concludes that since bidders were on notice that they were responsible for fluctuating quantities of radios, there existed no basis for canceling the IFB.

Because the cancellation of an IFB after bid opening could adversely affect the integrity of the competitive sealed bidding system, a procuring agency must have a compelling reason to cancel an invitation after opening. Dyneteria, Inc., B-211525.2, Oct. 31, 1984, 84-2 C.P.D. ¶ 484. We have held that the use of specifications which do not adequately describe the government's actual needs generally provides a compelling reason to cancel a solicitation. Garrison Construction Co., B-211359.2, Oct. 31, 1983, 83-2 C.P.D. ¶ 515. Cancellation is improper, however, where no bidder was prejudiced by a solicitation inadequacy, and the government would fulfill its actual needs through the award of the contract. A to Z Typewriter Co., et al., B-215830.2, et al., Feb. 14, 1985, 85-1 C.P.D. ¶ 198; Twehous Excavating Co., Inc., B-208189, Jan. 17, 1983, 83-1 C.P.D. ¶ 42. We find that the cancellation of this IFB was improper.

While it may be that the Air Force's needs would have been expressed best in a requirements contract, the Air Force has not established that award based on the quantities as stated would prejudice bidders or prevent the Air Force from satisfying its minimum needs. In this regard, we agree with ADAK that even if the quantity of radios to be maintained fluctuated somewhat, the terms of the Addition/Deletion clause would require the contractor to maintain new radios at a price based on the formula in the clause. The clause provides:

"Addition or deletion of equipment may occur during the contract period. Cost of added or subtracted equipment will be based on the unit price per item per month, or 1/30 of the monthly rate for each day less than a complete month."

The Air Force argues that the Addition/Deletion clause would not cover increased quantities since the clause was intended merely to allow for substitution of new radios for radios that were scrapped and sent to salvage, not to increase or decrease the quantity of radios. We disagree. The Air Force's underlying intention notwithstanding, the Addition/Deletion clause, by its clear terms, contemplates possible increases or decreases in equipment, not just substitutions. We consider significant in this regard the fact that the clause provides for a cost adjustment for additions or deletions; if the only purpose of the clause was to permit the substitution of radios, it appears there would be no need for such a cost adjustment provision. The Air Force does not indicate why, under its interpretation, cost adjustments might be necessary.

We would be inclined to agree with the Air Force that stating a fixed quantity instead of an estimate could necessitate cancellation where the fixed quantity is a gross misstatement of the agency's actual needs. See generally Ace Van & Storage Co., et al., B-213885, et al., July 27, 1984, 84-2 C.P.D. ¶ 120. The record, however, contains no evidence that this is the case here. Although the Air Force states that the fixed quantities are not reasonably accurate and that the estimated quantities would be higher, the Air Force nowhere indicates its actual estimate, or even hints at the magnitude of the difference between the estimate and the fixed quantity. Absent evidence that the fixed

quantities were inadequate in this regard, there is no basis for finding that bidders would be misled and thus prejudiced, or that the Air Force would not be able to meet its needs with an award under the IFB.

The protest is sustained. The IFB should be reinstated and the contract for radio maintenance services at Brooks Air Force Base awarded to ADAK, if found to be otherwise eligible for the award.

As for ADAK's request for reimbursement of its costs, the recovery of bid preparation costs is not appropriate where our Office recommends that the protester receive the contract award. 4 C.F.R. § 21.6(e) (1985). Likewise, the protester cannot recover the costs of filing and pursuing the protest where we recommend that the contract be awarded to the protester. Id. The recovery of costs will be allowed only where the protester does not receive a fair opportunity to compete for award; where the protester does obtain the award as a result of our decision, we consider the award to be a sufficient remedy in itself. Bendix Field Engineering Corp., B-219406, Oct. 31, 1985, 85-2 C.P.D. ¶ 496.

*for Milton J. Arcolan*  
Comptroller General  
of the United States